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Division of Consumer Protection*

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

FREE SPEECH COALITION, INC., A California
Not-For-Profit Trade Association, On Its Own
Behalf and On Behalf of Its Members,

Plaintiff,

vs.

THE STATE OF UTAH, a body politic; THE
UTAH DEPARTMENT OF COMMERCE, a
department in the executive brnch of the State of
Utah; THE DIVISION OF CONSUMER
PROTECTION, an administrative agency in the
Utah Department of Commerce; MARK
SHURTLEFF in his official capacity as Utah
attorney General of the State of Utah;
GRANCINE GIANI, in her official capacity as
the Executive Director of the utah Department of
Commerce, and in her official capacity as the
Director of the Division of Consumer Protection
in the Utah Department of Commerce,

Defendants.

**MOTION TO DISMISS AS
AGAINST “STATE”
DEFENDANTS**

Judge J. Thomas Greene

Case No. 2:05CV00949

Defendants State of Utah, “a body politic,” Utah Department of Commerce, “a department in the executive branch of the State of Utah,” and Division of Consumer Protection, “an administrative agency in the Utah Department of Commerce,” (hereinafter “State Defendants”), by and through their attorney of record, Thom D. Roberts, Assistant Utah Attorney General, hereby move the Court for an order dismissing this case as against them on the grounds and for the reason that this action is barred by the Eleventh Amendment to the United States Constitution, the State of Utah and its executive branch agencies and divisions are not “persons” under 42 USCA § 1993, and thus not subject to suit under that provision, and as more fully set forth in the Memorandum filed in support hereof.

Dated this _____ day of _____, 2005.

MARK L. SHURTLEFF
Attorney General

THOM D. ROBERTS
Assistant Attorney General
Attorneys for State Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the MOTION TO DISMISS AS AGAINST “STATE” DEFENDANTS was sent by U.S. Postal Service first class mail, prepaid, and email on this the _____ day of December, 2005.

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